



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, बृहस्पतिवार, 17 अक्टूबर, 1974/25 आश्विन, 1896

GOVERNMENT OF HIMACHAL PRADESH

GOVERNOR'S SECRETARIAT, HIMACHAL PRADESH

NOTIFICATION

Simla-4, the 11th October, 1974

No. 33-67/73-GS(9).—Whereas, on a petition presented by Shri Madhvindra Sharma, Advocate, Simla, before the Governor of Himachal Pradesh, a question arose within the meaning of Article 192(1) of the Constitution whether Shri Lal Chand Prarthi, Forest Minister, H. P., a Member of the H. P. Vidhan Sabha, has incurred a disqualification under Article 191 of the Constitution for being a Member of the said Vidhan Sabha by accepting the office of the Director of Nahan Foundry Pvt. Ltd.;

And whereas, the Governor referred the said question for the opinion of the Election Commission as required under Article 192(2) of the Constitution;

And whereas, the Election Commission has since tendered its opinion, appened below, on the said question;

Now, therefore, the Governor, acting according to the said opinion of the Election Commission is pleased to hold that Shri Lal Chand Prathi has incurred no such disqualification as alleged in the petition of Sh. Madhvindra Sharma and is further pleased to dismiss the said petition.

R. K. ANAND,
Secretary.

ELECTION COMMISSION OF INDIA

OPINION

This is a reference under Article 192 of the Constitution from the Governor of Himachal Pradesh arising out of the petition presented before him by one Sh. Madhvindra Sharma, Advocate, Simla.

In his petition Shri Madhvindar Sharma, alleges that the respondent Shri Lal Chand Prathi, the Minister for Housing, Himachal Pradesh and elected member of the Legislative Assembly a member of that Assembly for the reason that he is holding the office of a Director of the Nahan Foundry (Limited), Nahan, a Government Company, which is an office of profit under the State Government. According to the petitioner, under the Articles of Association of the Nahan Foundry (Ltd.) the office of Director of that Company carries salary and allowances and the Legislative Assembly of Himachal Pradesh has not declared by law that a holder of the said office would not be disqualified for being chosen as, or for being, a member of the Legislative Assembly of Himachal Pradesh.

The Commission issued a notice to Shri Prathi on 8 July, 1974 directing him to file a written statement supported by an affidavit in proper form replying to the allegations contained in the petition. The petitioner Shri Madhvindra Sharma was also directed by a notice dated 8 July, 1974 to file necessary affidavits and produce necessary documents on or before 1 August, 1974 in support of the allegations contained in his petition to the Governor. When he failed to comply with the direction by 1 August, 1974, he was reminded. The petitioner has not cared to reply so far. A copy of the Articles of Association of the Nahan Foundry (Limited) and certain other relevant papers relating to the appointment of Directors and Chairman of the company were also obtained through the Governor of Himachal Pradesh.

In his reply, supported by an affidavit, Sh. Prathi has admitted that he has been nominated by the Governor as a Director on the Board of Directors of the Nahan Foundry (Limited) But he has denied that any salary, profit or emoluments are attached to the office held by him. According to him, it was decided by Govt. in September/October, 1973 that officers and officials appointed to the Boards of Directors of Public Sector Enterprises/Undertakings as part time directors or in addition to their normal duties, would not be entitled to any remuneration or allowance whatsoever. In support of this statement, he has enclosed a copy of the Government's order dated October, 1973 and also an affidavit from the General Manager and Secy. of the Nahan Foundry (Limited) Nahan to the effect that no remuneration or profit in any shape or form is attached to the office of Director/Chairman of the Board of Directors of the Foundry and that Shri Prathi has not been paid even T. A. or any other remuneration or allowance of any kind from the funds of the Company.

Shri Prarthi has also raised a preliminary objection to the effect that the petition itself is barred by the provisions of the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971 (Act No. 7 of 1971).

There is no dispute about the fact that Sh. Prarthi is holding the office of Director of the Nahan Foundry Limited, Nahan, and that this office is being held by him either in an *ex-officio* capacity as Minister of Himachal Pradesh or personally. The simple question therefore for my consideration is whether Shri Prarthi is holding any office of profit under the Government of India or the Government of any State other than an office declared by the Legislature of the State by law not to disqualify the holder, within the purview of sub-clause (a) of clause (1) of article 191 of the Constitution. Section 3 (b) and (m) of the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971 (Act No. 7 of 1971) reads :—

“3. *Prevention of disqualifications for membership of the Legislative Assembly of Himachal Pradesh.*—A person shall not be disqualified for being chosen, as, and for being a member of the Himachal Pradesh Legislative Assembly by reason only of the fact that he holds any of the following offices of profit under the Government or India of the Government of any State :—

- (b) any office held by a Minister, Minister of State, or Deputy Minister whether *ex-Officio* or by name ;
- (m) the Office of Chairman or Vice-Chairman, Director or member of any statutory or non-statutory body other than any such body as is referred to in clause (1) if the holder of such office is not entitled to any remuneration other than compensatory allowance.”

Under the above provisions, it is clear that as Sh. Lal Chand Prarthi is holding the office of Director of the Board of Directors of the Nahan Foundry (Limited) in his *ex-officio* capacity as Minister he is saved from disqualification by virtue of the clear provisions of section 3 (b) of the Act referred to above. In this situation it becomes unnecessary for the Commission to go into the question whether section 3 (m) of that Act is also applicable to the case of Shri Prarthi.

For the reasons stated above, the Commission holds, and accordingly tenders opinion to the Governor of Himachal Pradesh, that Shri Lal Chand Prarthi has not incurred any disqualification under article 191 of the Constitution for being a member of the Legislative Assembly of Himachal Pradesh.

Sd/- T. SWAMINATHAN,
Chief Election Commissioner of India.

NEW DELHI:
24 September, 1974.

